



## ***CLOSED CASE SUMMARY***

ISSUED DATE: JANUARY 4, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0237

### **Allegations of Misconduct & Director's Findings**

#### **Named Employee #1**

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Training Referral)
# 3	16.230 - Issuing Tickets and Traffic Contact Reports 3. Officers Document All Traffic Stops	Not Sustained (Training Referral)

#### **Named Employee #2**

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing 6. Supervisors Conduct Preliminary Inquiry into Bias-Based Policing	Not Sustained (Lawful and Proper)
# 2	5.140 Bias-Free Policing 7. Employees Will Document All Allegations of Bias-Based Policing	Not Sustained (Training Referral)

***This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.***

### **EXECUTIVE SUMMARY:**

The Complainant alleged that Named Employee #1 stopped her based on bias. OPA further alleged that Named Employee #1 may have failed to timely report the allegation of bias and failed to serve a Traffic Contact Report in person on the Complainant. OPA further alleged that Named Employee #2, a supervisor, did not properly investigate or document the Complainant's allegation of bias.

### **ADMINISTRATIVE NOTE:**

OPA determined that Named Employee #1 failed to activate Body Worn Video during this incident. As he did record In-Car Video and as he had not violated this policy in the past, OPA returned this allegation to the chain of command to be handled as a Supervisor Action.

### **SUMMARY OF INVESTIGATION:**



The Complainant initiated this OPA complaint in which she alleged that Named Employee #1 (NE#1) stopped her for honking her horn. The Complainant disputed that her conduct warranted a traffic stop and, instead, asserted that her stop was based on bias.

As part of its investigation, OPA reviewed the In-Car Video (ICV) from NE#1's patrol vehicle. The video showed that, at the time NE#1 pulled over the Complainant, he told her that the stop was based on her excessive horn honking, as well as her yelling and screaming. He expressed his concern that she was involved in a road-rage situation. The Complainant asked if she was going to get a ticket and denied that she involved in a road-rage incident. She then asked if she could leave. She admitted that she had been honking her horn but said that she was no longer doing so. She also told NE#1 that, while she was honking her horn, she could have "go a lot further." She told NE#1 that he was upsetting her and began raising her voice at him. She asked him where they were going to "go" from there and said that he could not give her a ticket for being upset. NE#1 told the Complainant that he would be issuing her a Traffic Contact Report (TCR) and he took her driver's license and returned to his vehicle to complete the report. The Complainant did not have proof of insurance on her at the time.

When he returned to the Complainant, he asked her to confirm her address. He indicated that he needed to make sure that this information was accurate because he did not want to issue her a ticket. The Complainant loudly stated that NE#1 could not issue her a ticket because she did not do anything wrong. NE#1 tried to speak but the Complainant talked over him and continued to talk in an elevated tone of voice. NE#1 told the Complainant that he was going to send her the TCR in the mail. She asked for it then, but he told her that he did not have his booklet on him at the time. The Complainant asked if they were done and what was "next." She then said to NE#1: "Thank you, dumb fuck."

The Complainant asked for NE#1's identifying information and he provided it. She then engaged in a long soliloquy, during which she asserted that NE#1 stopped her, not because she committed a citable offense, but due to her race. NE#1 again explained the basis for the stop. He then ended the contact and walked away. The Complainant drove off from the scene.

#### **ANALYSIS AND CONCLUSIONS:**

##### **Named Employee #1 - Allegation #1**

##### ***5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing***

SPD policy prohibits biased policing, which it defines as "the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual." (SPD Policy 5.140.) This includes different treatment based on the race of the subject. (*See id.*)

Based on OPA's review of the evidence, there is no indication that the stop of the Complainant was based on bias. Most notably, the ICV established that the Complainant was honking her horn repeatedly and was engaged in activities that could have suggested a road-rage incident. Under SMC 11.84.320, a motorist should only use a vehicle's horn when "reasonably necessary" and, otherwise, should avoid doing so. Here, NE#1 found – appropriately, in OPA's opinion – that the Complainant's use of her horn was not "reasonably necessary" and was instead used to get the attention of the motorist she was pursuing. This was illegal and justified the stop.



Given the above, OPA finds that the Complainant's conduct, not her race, was the basis for the stop. As such, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

**Named Employee #1 - Allegation #2**

***5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing***

SPD Policy 5.140-POL-5 requires employees to call a supervisor in response to allegations of biased policing. This includes providing sufficient information to the supervisor to allow a determination as to what occurred and what the nature of the bias allegation is. (SPD Policy 5.140-POL-5.)

After the stop concluded, NE#1 informed his Sergeant – Named Employee #2 (NE#2) – that the Complainant may have made an allegation of bias. However, NE#1 did not immediately notify NE#2 and call him to the scene as was required. Moreover, by the time NE#1 informed NE#2 of the allegation of bias, the Complainant had already left the scene and it precluded NE#2 from conducting the full investigation that he was required to perform under policy.

While OPA finds that NE#1 technically violated policy by failing to immediately call NE#2 to the scene, OPA recognizes that he did, later, notify NE#2 and that NE#1 has never violated this policy in the past. Accordingly, OPA recommends that he receive retraining rather than discipline.

For the above reasons, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1 should be reminded of the requirement that he timely report allegations of bias and should be informed that the future failure to do so may result in the potential imposition of discipline. This counseling and associated retraining should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

**Named Employee #1 - Allegation #3**

***16.230 - Issuing Tickets and Traffic Contact Reports 3. Officers Document All Traffic Stops***

OPA's investigation established that, while NE#1 completed a TCR, he did not provide a copy of the TCR to the Complainant.

SPD Policy 16.230-POL-3 governs the issuance of TCRs. SPD Policy 16.230-TSK-1(5) specifically requires that, when a TCR is completed, the officer: "Serves the violator with the "Defendant Copy" of the...TCR."

While NE#1's failure to provide a copy of the TCR to the Complainant constituted a technical violation of policy, OPA does not believe that a Sustained finding is warranted for three main reasons. First, NE#1 has not previously violated this policy. Second, OPA has seen other officers make similar mistakes and has handled those issues with training rather than discipline. Third and last, OPA recently issued a Management Action Recommendation in 2019OPA-0922 in which OPA made the recommendation that SPD consider no longer requiring the in-person service of TCRs and,



instead, allow them to be mailed to motorists similar to citations. Were this Management Action Recommendation to be implemented, NE#1's conduct would no longer be in violation of policy.

For the above reasons, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** OPA requests that NE#1's chain of command counsel and retrain him concerning the requirement that, when he issues a TCR, he timely provides a copy to the driver. Any retraining and/or counseling that is provided should be documented, and that documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

#### **Named Employee #2 - Allegation #1**

##### ***5.140 - Bias-Free Policing 6. Supervisors Conduct Preliminary Inquiry into Bias-Based Policing***

OPA's investigation verified that, once he became aware of the allegation of bias, NE#2 debriefed the incident with NE#1, reviewed NE#1's ICV, and contacted the Complainant via telephone. During his conversation with the Complainant: he attempted to address her allegation; he provided her with OPA's contact information; he asked if she wanted to file an OPA complaint; and, when she declined, he obtained her consent to resolve her claim with a chain of command review.

Given this, OPA finds that NE#2 fully satisfied the requirements of this policy and recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

#### **Named Employee #2 - Allegation #2**

##### ***5.140 Bias-Free Policing 7. Employees Will Document All Allegations of Bias-Based Policing***

SPD Policy 5.140-POL-7 requires Department supervisors to document all allegations of biased policing. The policy instructs that, where an allegation of biased policing is made, the supervisor must either make an OPA referral or investigate the allegation and document it in a Bias Review Template. (See SPD Policy 5.140-POL-7.)

NE#2 did not complete either a Bias Review or an OPA referral. He told OPA that, based on his evaluation of the evidence and his conversation with the Complainant, he felt that there was no basis to the bias allegation. He further explained that he did not document the bias allegation for the following reasons: (1) the Complainant did not make an explicit allegation of bias; (2) the Complainant repeatedly told him that she was not making an allegation of bias; (3) the Complainant did not want to file a complaint; and (4) the Complainant considered the matter closed.

While OPA has no reason to doubt any of the above and concurs that the bias allegation was unfounded, OPA concludes that NE#1 was still required to document it. Specifically, OPA finds that the Complainant did make an explicit allegation of bias at the scene and that, accordingly, policy required him to complete a Bias Review. Notably, OPA has reviewed numerous Bias Reviews generated by other supervisors in similar situations, including where subjects have either minimized or withdrawn bias allegations. It is important to do so in order to document that the



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allegation was made and the investigation that was performed to the extent that the subject later files a complaint, tort claim, or lawsuit. Indeed, this is exactly what happened here.

While OPA finds that the failure to complete a Bias Review was in violation of policy, OPA recommends retraining rather than discipline. OPA notes that NE#2 has not acted contrary to this policy before and, based on his OPA interview, he was clearly acting in good faith.

As such, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#2 should be reminded by his chain of command that he document all allegations of bias, even where a subject may recant the allegation after the fact. This retraining and counseling should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**